78-172

Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

PETITION FOR CERTIORARI

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1978

No. 78172

JIN WON PARK and THE SYSTEMS CORPORATION, a Hawaiian corporation,

Petitioners,

v.

IMMIGRATION AND NATURALIZATION SERVICE

SUPPLEMENTAL APPENDIX

GERALD H. ROBINSON
Attorney for Petitioners
300 Standard Plaza
Portland, Oregon 97204
Tel: (503) 228-6277

TABLE OF CONTENTS

	Page
Application for Waiver of the Foreign Residence Requirement Under Section 212(e) of the Immigration and Nationality Act dated Jan. 9, 1975	A-15
Application for Waiver of the Foreign Residence Requirement Under Section 212(e) of the Immigration and Nationality Act dated March 1976	A-18
Order Denying Petition for Rehearing	A-20

APPENDIX D

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Northwest Regional Office
Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

File: A17 152 762 - Portland Jan 9, 1975
In re: Jin Won PARK

APPLICATION FOR WAIVER OF THE FOREIGN RESIDENCE REQUIREMENT UNDER SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT

Attorney or
Representative: Mr. Gerald H. Robinson
Attorney at Law
1400 Standard Plaza
Portland, Oregon 97204

BEFORE THE REGIONAL COMMISSIONER

This case is before me on appeal from the June 13, 1974 order by the District Director, Portland, denying the application for waiver of the two-year foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended.

In arriving at his decision to deny, the District Director concluded that hardships which would be suffered by the applicant's minor United States citizen child would be those usual and normal hardships expected to accrue through an international move from a progressive Western country to an Asian environment. The District Director, citing the legislative history of the Mutual Educational and Cultural Exchange Act of 1961, properly held that a strict interpretation of the term "exceptional hardship" must be made in order to properly administer this Act in the

manner contemplated by the Congress at the time of its enactment.

On appeal counsel for the applicant, in a substantial brief and at oral argument, brings up numerous points which he alleges establish that the applicant's United States citizen child will experience extreme and unusual hardships if the applicant is required to comply with the two-year foreign residence requirement. It should be noted here that the applicant's child is in good health and expected hardships enumerated by counsel treat such conditions as: Inadequate housing, food, clothing, etc.; existence under a government that is practicing repressive tactics; inability of the applicant to obtain employment at the level of his educational achievement, thereby rendering him unable to earn sufficient income to properly maintain his family; and the possibility that the applicant being of an age of military liability, would be unable to depart from Korea as an immigrant after completion of two years residence there.

The record in this case has been thoroughly considered. Acceptance of counsel's appeal arguments as valid grounds for a finding of exceptional hardship within the meaning of the statute would, in effect, be a blanket authorization for waiver of the two-year foreign residence requirement for anyone from Korea with a citizen child. The applicant holds a Master of Science degree in electrical engineering granted by the University of Hawaii. Even though his occupational bent is toward the highly technical area of sophisticated data processing systems, it is inconceivable that a person of such educational achievement would be unable to find employment providing a suitable salary to support a wife and child in Korea. The District Director's finding that the applicant's

child would suffer only usual and normal hardships is correct and proper. On appeal the applicant has failed to furnish evidence which would cause reversal of the District Director's order. The appeal will be dismissed.

IT IS ORDERED that the appeal be and the same is hereby dismissed.

REGIONAL COMMISSIONER
Northwest Region

UNITED STATES DEPARTMENT OF JUSTICE
Immigration and Naturalization Service
Northwest Regional Office
Federal Building, Fort Snelling
Twin Cities, Minnesota 55111

File: A17 152 762 - Portland March 1976

In re: Jin Won PARK

APPLICATION FOR WAIVER OF THE FOREIGN RESIDENCE REQUIREMENT UNDER SECTION 212(e) OF THE IMMIGRATION AND NATIONALITY ACT

Attorney or
Representative: Gerald H. Robinson
Attorney at Law
1400 Standard Plaza
Portland, Oregon 97204

BEFORE THE REGIONAL COMMISSIONER

On January 9, 1975, the former Regional Commissioner dismissed the applicant's appeal from denial of his application for waiver of the two year foreign residence requirement of section 212(e) of the Immigration and Nationality Act, as amended. The applicant carried the matter into the United States District Court, District of Oregon. During court proceedings it was ascertained that the applicant's spouse was pregnant and expected to give birth to a child in late December 1975. The matter has been remanded to this office for reconsideration of our previous decision in light of the pregnancy of the applicant's spouse. I, therefore, order on my own motion that this case be reopened.

The record contains a certificate of live birth indicating that a female child was born to the applicant and his spouse in Portland, Oregon, on December 21, 1975. Although the record is silent in this respect, it is presumed that

the mother and child have been released from the hospital and are currently residing with the applicant.

Aside from the fact that the applicant and his spouse are now parents of two United States citizen offspring instead of one, the record of proceeding in this case remains identical to that which was considered at the time of our order of January 9, 1975. I have carefully reviewed all of the record material in this matter, and find that there is nothing upon which to base a finding that the newborn child of this couple will experience any more of an exceptional or unusual hardship from residing with her parents in Korea than will the child already considered in the original decision. I, therefore, find no basis for a change of position by the Immigration Service in this case.

IT IS ORDDERED that this reopened appeal be and the same is hereby dismissed.

REGIONAL COMMISSIONER
Northern Region

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JIN WON PARK AND THE SYSTEMS CORPORATION, a Hawaiian corporation, Appellants	)	No. 76-3336
vs.	)	ORDER
IMMIGRATION AND NATURALIZATION SERVICE, Appellee	)	

Appeal from Judgment of the United States District Court for the District of Oregon

Before: ELY, TRASK and ANDERSON, Circuit Judges

After due consideration, the petition for rehearing is DENIED.